

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
May 16, 2013
AMENDED**

Members Present

Vic Lessard, Chairman
Bryan Provencal, Vice Chairman
Ed St. Pierre, Clerk
Tom McGuirk
Bill O'Brien
Jack Lessard (Alternate)

Others Present

Kevin Schultz, Building Inspector
Joan Rice, Secretary

Chairman Lessard called the meeting to order at 7:00 p.m.

Board members were introduced.

The Pledge of Allegiance was said.

PETITION SESSION

19-13...The petition of Ronald A. Remick, Individually, Ronald A. Remick, Trustee of the Ronald A. Remick Revocable Trust Amended and Restated for property located at 436 Winnacunnet Road and Esker Road seeking an appeal from an Administrative Decision denied on 3/6/13 to propose a lot line adjustment, not increasing development potential of either lot. No construction proposed. This property is located on Map 208, Lot 049, 50-A-1 and in a RB Zone.

Attorney Craig Soloman came forward. He said the petitioner has two lots, one of which has 50 feet of frontage on Esker Road and another lot with 50 feet of frontage on Winnacunnet Road. He wants to take some of the land on Winnacunnet Road and add it to the parcel on Esker Road. A garden will be added. The Planning Board turned this down in March for a variety of reasons. All of these reasons were based on subdivision. This is not a subdivision. The Zoning ordinance does not define a subdivision. In this case, it begins with two lots and ends with two lots. Attorney Soloman asked the Board to rule that the Planning Board was incorrect in treating this as a subdivision. This is a lot line adjustment only and will not increase development potential of either lot and there is no construction proposed. The Zoning Board's jurisdiction arises because the Planning Board incorrectly applied zoning dimensional requirements to a division of the land which does not meet the definition of a subdivision, but does meet the definition of a lot line adjustment.

Questions from the Board

Mr. O'Brien said the frontage on each lot according to the plan is 20 feet, not 50 feet. Attorney Soloman said Mr. O'Brien was correct. Mr. O'Brien asked if the Conservation Commission was consulted regarding the addition of a garden. Attorney Soloman said he did not know. Mr. O'Brien said this will make the larger pork chop lot more non-conforming and asked if the applicant had received a waiver from the Zoning Board. Attorney Soloman said no.

Mr. McGuirk asked about the "T" on the plan and asked if it is created on Esker Road and is part of the lot would they retain access if the lot was sold. Attorney Soloman said yes.

Mr. St. Pierre asked if there was a house on Esker Road. Attorney Soloman said there was not.

Comments from the Audience

Mary Ann Hadeka, 36 Esker Road, came forward. She said this has been going on for three years and all of Mr. Remick's plans have been rejected by many boards. All abutters have signed a petition against a driveway.

Wanda Robertson, Assistant Town Counsel, came forward and said she was at this meeting to defend the Planning Board. It was denied because it would create a non-conforming use. It doesn't make sense to have a lot line adjustment to put in a family garden. It takes a non-conforming lot and makes it even more non-conforming.

Mark Olsen, Chairman of the Planning Board, came forward and said he felt the case has been made.

Terry Burnett, Esker Road, came forward. She said she wanted to address the tree issue. There is a deed restriction prohibiting cutting down those trees. It appears that Mr. Remick is taking all these steps to get a driveway in the swale.

Bill Hanny, Esker Road, came forward and said it was his understanding that this swale is a wetland swale and that is sacred. To take this step for the purpose of a garden is ridiculous.

Jamie Stefan, Town Planner, came forward. Mr. Stefan said this was applied for as a lot line adjustment, but in moving that lot line it is creating a larger lot and making the lot on Winnacunnet Road more non-conforming. The Planning Board saw it as a subdivision and felt this proposal went against the zoning requirements.

Back to the Board

Moved by Mr. Provencal, seconded by Mr. McGuirk, to deny Petition 19-13.

Vote: 5 yes, 0 no. Motion passed unanimously.

At this time Mr. O'Brien suggested tabling Petition 20-13 until after addressing of the Motion for Rehearing.

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to table Petition 20-13 until after the Motion for Rehearing is heard on Petition 09-13.

Vote: 5 yes, 0 no. Motion passed unanimously.

21-13...The petition of McGuirk's Ocean View, Inc. for property located at 95 Ocean Blvd. seeking relief from Article I, Section 1.3, Article IV, Sec. 4.5.2 to expand tower element and decorative awning element both on east face of building to be constructed as part of the renovation of McGuirk's Ocean View. This property is located on Map 190, Lot 118 and in a BS Zone.

At this time Mr. McGuirk stepped down from the Board and Mr. Jack Lessard stepped up to the Board.

Tom McGuirk, Principal, and Attorney Steven Ells came forward. Attorney Ells said this property is in the process of a facelift and part of these renovations is to extend the tower element and expand the decorative awning.. These are both on the east face of the building. These decorative elements will be entirely consistent with the recent upgrades to infrastructure undertaken by the State, the Town of Hampton and the business community at Hampton Beach. They will also enhance the value of the property and increase the values of all surrounding properties. Attorney Ells went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre asked if this would just be on the side of the property and not the front. Attorney Ells said that was correct. Mr. McGuirk said they wanted to retain the tower because it is a calling card at the beach.

Comments from the Audience

Mary Preely, 97 Ocean Blvd., said she wanted to make sure the applicant meets the requirements of the variance.

Bob Preston, 35 C Street, said Mr. McGuirk's timing is perfect. Mr. Preston said speaking as a member of the Beach Commission he is definitely in favor of this petition.

Rick Griffin, Selectman, said he was in favor of this project. It is a big improvement and an investment in the future.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. Provencal, to grant Petition 21-13.

Chairman Lessard asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk stepped up to the Board and Mr. J. Lessard stepped down from the Board.

22-13...The petition of Mike O'Neil through Robert Gray for property located at 4 Nor'east Lane seeking relief from Article IV, Section 4.5.1 Front Setback, Section 4.5.2 Left Setback and Article I, Section 1.3 Expansion of non-conforming structure to construct a one storoy 6' x 28' structure to allow for (1) one car garage below and an extension to exterior deck above. This property is located on Map 99, Lot 1 and in a RA Zone.

Robert Gray, Gray Construction, came forward. Mr. Gray said the applicant wants to increase storage space and have room for cars and snow equipment. It was decided to do an expansion of the deck on top. Mr. Gray went through the five criteria and said he felt they had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Provencal, seconded by Mr. McGuirk, to grant Petition 22-13.

Chairman Lessard asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

BUSINESS SESSION

MOTION FOR REHEARING 339 & 345 OCEAN BOULEVARD- Petition 09-13

At this time Mr. Provencal stepped down from the Board and Mr. J. Lessard stepped up to the Board.

The Board reviewed the Motion of Rehearing filed by the Hampton Board of Selectmen.

Mr. O'Brien suggested that the Board go through this document paragraph by paragraph. The Board agreed to do so.

A. Introduction

1. Statement of fact.
2. Statement of fact.
3. Statement of fact. This identifies the five criteria.

B. The grant of the variance relative to building height violated the requirements of RSA 674:33

4. Statement of fact. This defines building height as it is in the ordinance.
5. Discussion in Minutes. Statement of fact.
6. Mr. St. Pierre said this quote is not accurate. Mr. McGuirk said it is in the Business Zone.
7. Mr. St. Pierre said according to RSA 674:33 you cannot exclude the disabled and that is the reason for the elevator. Mr. O'Brien noted that a letter had been received from John Nyhan, Chairman of the Hampton Beach Area Commission, expressing support for this project as it fits well with the Beach Master Plan.
8. Mr. O'Brien said this is contrary to the RSA and the establishment of the Zoning Board. The Zoning Board is supposed to consider on a case by case basis. The Zoning Board grants exceptions to zoning ordinances.
9. This is paraphrasing the Master Plan.
10. It depends on how "hardship" is defined.

11. Statement of fact. However, the Zoning Board has approved other projects that were higher, but were never built.

12. Mr. O'Brien said he did not believe the ordinance was bypassed.

C. No parking was provided for the retail or restaurant uses as required by Section 6.3.4 or 6.3.5 of the Hampton Zoning Ordinance

13. Statement of fact.

14. Statement of fact. It is not required by 6.1.1.

15. This is trumped by 6.1.1. It does not require any parking.

D. There was no information or evidence provided at the hearing or in the application supporting the grant of the variances relative to setbacks or lot size per dwelling unit

16. The applicant did not seek relief from 4.1. Relief was sought from 4.1.1. The wrong article is being addressed. The square footage number is also incorrect.

17. Mr. O'Brien said that in reading the Minutes this is never referenced.

18. There are no developments like this at the beach.

Mr. McGuirk said that when the Board votes to grant or deny, it should be based on the contents of the Motion for Rehearing which was just discussed. Chairman Lessard also emphasized this point.

Moved by Mr. McGuirk, seconded by Mr. St. Pierre to deny the Motion for Rehearing for Petition 09-13, 339 & 345 Ocean Boulevard.

Mr. O'Brien said he would be abstaining because he was not at the referenced meeting.

Vote: 4 yes, 0 no, 1 abstention (O'Brien). Motion passed.

20-13...The petition of Bertram and Darlene White and Ann Marie Clemence through Green & Company Real Estate for property located at 339 and 345 Ocean Blvd. seeking relief from Articles 3.10, 4.5.1, 4.5.1 and 11.5a to place a temporary 24' wheeled sales/construction trailer upon the property initially for the purpose of generating interest and sales for the project before and during and as a construction headquarters during

construction where only its steps would be in the eliminated upon planning board approval of the Site Plan. This property is located on Map 275, Lot 61-67 and in the BS Zone.

Attorney Peter Saari came forward and said this is basically the same as what was done at the Sea Spray. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. O'Brien said he would like to move the trailer back four feet. He also said the applicant does not need 4.5.1.

Comments from the Audience

Robert Ledger, 347 Ocean Blvd., said he is in favor of the granting of this petition.

Joe Rawlins, abutter, said he had no problem with the trailer.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to grant relief from 3.10, 4.5.2 and 11.5a requested in Petition 20-13 but to deny 4.5.1.

Chairman Lessard asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

At this time Mr. Provencal stepped up to the Board and Mr. J. Lessard stepped down from the Board.

Adoption of Minutes

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to approve the Minutes of April 18, 2013 as amended.

Vote: 5 yes, 0 no. Motion passed unanimously.

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Adjournment

There being no further business, the meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Joan Rice
Secretary